UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	
CYRUS II, L.P., BAHAR DEVELOPMENT, INC., and MONDONA RAFIZADEH	§	Jointly Admin. Under Case No. 05-39857-H1-7
	§	
	§	(Chapter 7)
Debtors.	§	
	§	
	§	
RODNEY D. TOW, AS THE CHAPTER 7 TRUSTEE, *ET AL.*	§	Adversary Proceeding No. 07-3301
	§	
Plaintiffs.	§	
	§	
v.	§	
	§	
SCHUMANN RAFIZADEH, *ET AL*,	§	
	§	
Defendants.	§	

SCHUMANN RAFIZADEH'S SUPPLEMENTAL JOINDER IN MOTION TO WITHDRAW REFERENCE AND REQUEST FOR DISCRETIONARY WITHDRAWAL OF REFERENCE
(Relates to Docket #885)

Schumann Rafizadeh joins in the Motion to Withdraw Reference and Supplements it by this pleading requesting that, even if withdrawal of the standing order of reference as to Adversary Proceeding 07-3301 is not mandatory, that it be considered for reasons of discretionary withdrawal as set forth herein.

1. The Court may consider the nature of the proceeding itself as a justification for the withdrawal of the reference. The Court may also consider the fact that many past issues between the parties have been appealed and that both sides have indicated a willingness to appeal adverse determinations. The Court is aware than many defendants have refused to consent to entry of final order of the Bankruptcy Court.

2. In determining whether cause exists for withdrawing the reference, "the

district court should consider the goals of promoting uniformity in bankruptcy administration, reducing forum shopping and confusion, fostering the economical use of the debtors' and creditors' resources, and expediting the bankruptcy process." *Holland America Ins. Co. v. Succession of Roy*, 777 F.2d 992, 999 (5th Cir. 1985) (E. Jones, J.) (emphasis added). Often these factors weigh against withdrawing the reference of an adversary proceeding involving bankruptcy-specific issues. Often, Bankruptcy Court is less expensive and more efficient than a District Court. But in this case, Bankruptcy Court is the less efficient, less economical forum.

3. The District Court should withdraw the standing order of reference to conserve the debtors' and creditors' resources. It makes sense to try the case only once and minimize the number of appeals. Withdrawal of the reference will reduce the number of appeals by removing the intermediate level of appeal. Likewise, many parties refused to consent to entry of final orders by the Bankruptcy Court. If the Court withdraws the reference, an additional level of pleading and review is removed. Withdrawing the reference will be more efficient in both time and money. In a case as complex as this, any efficiency will have a substantial effect on the debtors' and creditors' resources.

4. The District Court should withdraw the standing order of reference to expedite the bankruptcy process. The Bankruptcy Court has taken many issues under advisement, but those issues are often issues of law posed as hotly contested summary judgment motions. Many of the issues are unique. Some are issues of first impression in this jurisdiction. Accordingly, the District Court should rule on the pending matters, as there is a significant likelihood that it would be considering the issues as an intermediate

appellate court otherwise.

5. Even though the District Court may allow the Bankruptcy Court to rule on pretrial matters, in this case, it should not. The Court's pretrial rulings focus primarily on non-bankruptcy issues, such as :

a. whether receiving checks from the United States (and similar actions) confer personal jurisdiction for a fraudulent transfer suit;

b. whether a creditor is barred under a statute of limitations under Texas, Ohio and Nevada law;

c. whether a party can contract to have standing when it acknowledges that it does not own the claim;

d. whether an item built and patented in China is "invented" in the United States;

e. whether Texas' and Nevada's restrictions on veil-piercing requiring actual fraud are applicable to claims asserted for fraudulent transfer and breach of duty; and

f. whether service in person in valid under the Hague Convention when service was not accomplished through the designated central authority, but rather by delivery by a private investigator to a registered agent.

6. Thus, there is no special expertise that the Bankruptcy Court would possess as to the bankruptcy laws that assists with these determinations. Indeed, many of these areas are likely more familiar to the District Court than the Bankruptcy Court. The factual familiarity possessed by the Bankruptcy Court, even to the complex fact pattern presented, does not carry much weight when pretrial issues are legal questions, not factual ones.

7. While it is clear that the Bankruptcy Court is familiar with many of the complex facts set forth in the complaint, it is also clear that numerous defendants have refused to consent to entry of final orders of the bankruptcy court, which requires that the District Court become familiar enough with the facts to rule on proposed findings and

conclusions with regard to non-core matters.

8. The case appears to involve issues relating to claims of valid patents and whether foreign patents may be obtained for devices built in China but which Plaintiffs claim were conceived of (in part) in the United States. If a matter involves "substantial and material consideration" of non-bankruptcy statutes, and "significant interpretation" of those statutes on the part of the court, then withdrawal of the reference is proper, even mandatory. *In re National Gypsum Co.*, 145 B.R. 539, 541 (N.D. Tex. 1992).

9. The case also involves international law and relations with foreign jurisdictions. It seeks to obtain discovery from numerous foreign entities, or to make them parties. The case has more than a *de minimis* effect on interstate commerce. This Adversary Proceeding, as a practical matter, ought to be dealt with in the District Court.

WHEREFORE, Schumann Rafizadeh prays that the Court recommend that the District Court exercise its discretion to withdraw the reference.

Respectfully Submitted,

September 5, 2008

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: */s/ Hugh M. Ray, III*

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served by the ECF system, on September 5, 2008, to the following parties:

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